IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2842 OF 2005

Bhartiya Kamgar Karmachari ... Petitioner

V/s.

Rashtriya Kamgar Sanghatana, ... Respondents

Mr. J.P. Cama, Sr. Counsel with Mr. Mahesh Londe i/b. Sanjay Udeshi & Co. for the petitioner.

Mr. R.D. Bhat for respondent No. 1.

CORAM : F.I. REBELLO &
S.R. SATHE,JJ.
DATED : 8th September, 2006

P.C.

. Rule. Heard forthwith.

2. In the year 1996 the petitioner had moved the Industrial Court for being recognized under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practises Act, 1971, which hereinafter shall be referred to as "the Act". On the application being allowed as a recognized union in the Establishment of respondent No. 2, a certificate was issued in favour of the petitioner on 26.03.1998. The respondent No. 1 came to be registered under the provisions of Trade Union

Act, 1926 on 28.02.2002. Presently, there are about 341 employees in the establishment of respondent No. 2. According to the petitioner they have 218 employees as its members who have paid membership subscription for the relevant period @ Rs. 10/- per month as per clause 3 of the Constitution of the petitioner union.

. Respondent No. 1 had filed an application being Application (MRTU) No. 25 of 2003 under Section 14 of the Act before the third respondent on 19.11.2003. The respondent No. 1 claimed recognition as recognized union in place of the petitioner in the undertaking of second respondent. In the application to respondent No. 3, first respondent union claimed a membership of 182 employees who had paid their membership subscription for the period from May, 2003 to October, 2003. It is based on this membership for the relevant period that the first respondent applied to respondent No. 3, by the application of 19.11.2003. The petitioners herein filed their reply and contested the case of respondent No.1.

3. The Investigating Officer (IO) pursuant to the order of respondent No. 3 dated 23rd February, 2005

carried out verification of membership of the petitioner as respondent No. 1. The IO in his report observed that the petitioner had produced a list of 218 members. The company had submitted a list of 415 employees in the employment during relevant time. The respondent No. 1 union claimed membership of 182 employees and the petitioner claimed membership of 218 employees. The IO found that there are 58 members who are claimed by both the unions as their members. The IO further observed that there are 124 members who are exclusive members of the applicant union i.e. respondent No. 1 and there were 160 workers who are exclusive members of the petitioners. The IO further observed that 73 workers are not members of either unions. Considering the membership, the IO recorded that the respondent No. 1 after excluding common members had membership of 29.88% and the petitioners after excluding the common members had membership of 38.55%.

4. Evidence was recorded before respondent No. 3. The issue framed for consideration was whether respondent No. 1 is entitled for recognition in the undertaking of respondent No. 2 in place of the petitioners. The respondent No. 3 held that

respondent No. 1 was entitled for recognition as recognized union in the undertaking of respondent No. 2 by its order dated 09.05.2005. The learned Tribunal noted that respondent No. 1 had produced all the relevant material whereas the petitioner had not produced before the IO, membership register, minute books of the meeting of the AGM as well as Executive Committee, cash book, bank pass book etc. It also noted that IO had found the membership register of the union is in the form "J" as per the requirement of the Rules and noted observation by the IO for non-production of the documents by the petitioner union. It observed that the petitioner had not produced the membership register as required to be maintained in form "J" as per the rules and other supporting documentary evidence and in respect of all these documents. IO took it for granted that membership of petitioner union was 218, on the basis only of the counter-foil receipt book. The objection raised by the respondent No. 1, to the admissibility of the documents filed by the petitioner was not considered. The learned Tribunal scrutinised the evidence led by the petitioner and respondent No. 1. The learned Industrial Court in para 30 of the Judgment referred to the evidence of Prakash Shinde,

Secretary of the NA union and to his cross-examination and noted that his statement that counter-foil receipt books could not be filed before the IO on 22.03.2005 as the time spent in searching the same. The learned Tribunal also quoted Section 52 of MRTU and PULP Act and Regulation 146 of Industrial Court Regulation, which requires other recognized unions to submit its return of membership to the Industrial Court and found that the petitioners have not complied with the same. The learned Member of the Industrial Court noted that the evidence produced by the documents produced by the petitioners under list Exhibit UA-17 were required to be accepted and proved. These were xerox copies of the documents produced from the proceeding before the Industrial Court and were not certified copies and in these circumstances these documents could not have been considered as evidence. The learned member also referred to the membership of 15 workers which could not be considered who were claimed by respondent No. 1 union and after considering the evidence arrived at the conclusion that respondent No. 1 was able to establish its claim to be recognised as the recognized union in place of the petitioners and accordingly directed issuance of certificate. That order is the subject matter of the present petition, in respect of

which on 15th June, 2005 a learned Bench of this Court had granted ad-interim stay and since them the matter has come up and being adjourned by various benches of this Court.

5. On behalf of the petitioners, their learned Counsel has raised various contentions. We will refer only to two of the submissions which in our opinion would be relevant in view of the order to be passed. It is submitted that the documentary evidence regarding membership had been filed before the Industrial Court, Thane in (MRTU) No. 25 of 2003, where a proceeding was pending. The petitioner had applied for copies of the documents and order was passed directing that the xerox copies of the documents be given to the petitioners. Accordingly, xerox copies were given instead of certified copies which they have filed before the IO, inspite of which, respondent No. 3 held that they were not admissible evidence. It is submitted that the petitioners' rights could not have been defeated for no fault of theirs. It is secondly pointed out that even employees who had resigned, their membership had been considered for the relevant period when they were no longer employees and that also discloses an error

apparent on the face of record.

. On behalf of respondent No. 1 Mr. Pius Varghese Pullikottil, the President has filed an affidavit. It is pointed out that the petitioners did not file even basic statutory documents like membership register in Form "J" which is required to be maintained by every registered union in accordance with Rule 18-A of the Bombay Trade and Regulation, nor any other original documents in support of their claim for membership. They also did not file periodical statutory return under Section 52 of the Act r/w Regulation 146 of the Industrial Court Regulations. It is set out that the reason given by the petitioner that they have filed record in a proceeding in the Industrial Court, Thane was rightly rejected by the learned Member of the Industrial Court. The petitioners were aware that hearing of the application filed by the respondent No. 1 had been expediated by this Court, by order dated 9th February, 2005 in Writ Petition No. 229 of 2005. There are various averments that the documents produced are fabricated and other aspects which need not to be gone into. It is sought to be set out that the respondent No. 1 in-fact command the support of majority of the workmen

in the establishment of respondent No. 2 and they have produced cogent material, which has been considered by respondent No. 3.

. Re-joinder has been filed on behalf of the petitioner union setting out that they had filed the copies of the documents considering that the strict rules of evidence are not applicable to the proceeding in the Industrial Court. Xerox copies of the documents ought not to have been rejected as the original documents had been filed before the Industrial Court, Thane being Application (MRTU) No. 25 of 2003.

6. In these circumstances the question is whether the impugned order of the respondent No. 3 is liable to be sustained or be set aside. In the instant case the petitioner was the recognized union. Respondent No. 1 has sought to be recognized in the place of the petitioners. Several records of the petitioners had been filed before the Industrial Court, Thane in Application (MRTU) No. 25 of 2003. Xerox copies of the documents filed therein were filed in the present proceeding before the Industrial Court and which documents have been rejected by the Industrial Court

on the ground that they have not been proved. In our opinion, it was always open to the Industrial Court to have called for the record of the proceeding before the Industrial Court at Thane and/or to ask the IO to verify from the original of the documents produced by the petitioner before the Thane Court and to authenticate the said documents from the original documents if any filed by the petitioners before the Thane Court. In our opinion, there has been failure of justice, and in these circumstances we are inclined to interfere with the impugned order and remand the matter back to the Industrial Court for reconsideration. In order to enable the petitioners herein to get an opportunity to prove their documentary evidence we have no doubt that respondent No. 1 will be given the liberty to cross-examine the evidence led by the petitioners. We have not gone into the other issues or the merits of the matter which is also for consideration by the Industrial Court.

7. In the light of that following order: -

i. The impugned order dated 09.05.2005 in Application (MRTU) No. 25 of 2003 before respondent No. 3 is quashed and set aside and the matter is remanded to respondent No. 3 for reconsidering the matter and thereafter to pass fresh orders.

ii. Before passing fresh orders, it will be open to the petitioners herein to take steps either to produce record in proceeding before the Thane Industrial Court and prove the same. If the petitioners have applied for the certified copy of the documents filed before the Industrial Court, Thane then to make available certified copies of the documents on record before it to the petitioner.

iii. The petitioner, however, will be bound independently prove these documents before the respondent No. 3 and/or to make such application, so that records are made available for the documents to be proved before respondent No. 3.

iv. The respondent No. 3 to complete the entire exercise within two months including passing of the order in the remanded matter. The time to be computed from a copy of this order being produced before it.

v. Rule made absolute. There is no order as to costs.

[F.I. REBELLO, J.]

[S.R. SATHE, J.]